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EXXONMOBIL  
CHEMICAL COMPANY  
5200 BAYWAY DRIVE  
P.O. BOX 2149  
BAYTOWN TX 77522-2149

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AUG 26 2008

In re Application of	:	
Abhari, et al.	:	
Application No. 10/825,348	:	DECISION
Filed: 15 April, 2004	:	
Attorney Docket No. 2003B043D	:	

This is a decision on the petition filed on 6 February, 2008, supplemented thereafter on 19 August, 2008, seeking to revive the application under 37 C.F.R. §1.137(b) as having been abandoned due to unintentional delay.

**NOTE:** There is no indication that Petitioner herein was ever empowered to prosecute the instant application. If Petitioner desires to receive future correspondence regarding this application, the appropriate power of attorney documentation must be submitted. A courtesy copy of this decision will be mailed to Petitioner. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary.

The petition under 37 C.F.R. §1.137(b) is **GRANTED**.

As to Allegations of  
Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee. (However, it does not appear that a terminal disclaimer and fee are due here.)

## BACKGROUND

The record reflects as follows:

Petitioner failed to reply timely and properly to the final Office action mailed on 6 July, 2007, with reply due absent extension of time on or before Monday 8 October, 2007.

The application went abandoned by operation of law after midnight 6 October, 2007.

While Petitioner filed on 31 October, 2007, a request for continued examination (RCE) (with fee) and an information disclosure statement (IDS), only fees expressly associated with the RCE and the IDS were authorized and no general fee authorization was provided at that time or is apparent from the transmittal of the application (such as might apply throughout prosecution). It also is noted that no amendment was filed as a submission under 37 C.F.R. §1.114 in response to the final Office action (rejection) in which no claims were allowed.

It does not appear that the Office mailed a Notice of Abandonment before the instant petition was filed.

On 6 February, 2008, Petitioner filed the instant petition (with fee), a supplementary statement of unintentional delay submitted on 19 August, 2008, and signed by the attorney of record, and Petitioner points to reply in the form of the RCE with fee previously filed and the amendment filed contemporaneously with the petition as the required reply under the regulation.

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

Out of an abundance of caution, Petitioners always are reminded that those registered to practice and all others who make representations before the Office are reminded to inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation—since all owe to the Office the continuing duty to disclose.<sup>1</sup>

(Petitioners who are not of record at the time an application goes abandoned and who do not obtain the statement of the person responsible for the application at the time of abandonment (attorney/agent/applicant/assignee) are reminded that their assertion(s) as to the nature of a delay and/or that a delay is unintentional are construed to have been made in concert with the aforementioned duty to inquire and disclose, and must notify the Office if their appreciation of the nature of the delay is one other than unintentional, or if they previously have failed to satisfy their obligation under 37 C.F.R. §10.18(b) to inquire into the underlying facts and circumstances when providing statements to the Office in this matter.)

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<sup>1</sup> See supplement of 17 June, 1999. The Patent and Trademark Office is relying on Petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

As to Allegations of  
Unintentional Delay

The requirements under 37 C.F.R. §1.137(b) have been satisfied.

CONCLUSION

Accordingly, The petition under 37 C.F.R. §1.137(b) is **granted**.

The instant application is released to Technology Center/AU 1796 for further processing in due course.

Petitioner may find it beneficial to view Private PAIR within a fortnight of the instant decision to ensure that the revival has been acknowledged by the Technology Center/AU in response to this decision. It is noted that all inquiries with regard to that change in status need be directed to the Technology Center/AU where that change of status must be effected—that does not occur in the Office of Petitions.

While telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214, it is noted that all practice before the Office is in writing (see: 37 C.F.R. §1.2<sup>2</sup>) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).



/John J. Gillon, Jr./  
John J. Gillon, Jr.  
Senior Attorney  
Office of Petitions

cc:  
ABRAHAM HERSHKOVITZ  
2845 DUKE ST.  
ALEXANDRIA, VA 22314

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<sup>2</sup> The regulations at 37 C.F.R. §1.2 provide:

**§1.2 Business to be transacted in writing.**

All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.